

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

EUGENE POATS,

Plaintiff and Appellant,

v.

OCWEN LOAN SERVICING, LLC et al.,

Defendants and Respondents.

E070023

(Super.Ct.No. RIC1711919)

OPINION

APPEAL from the Superior Court of Riverside County. Irma P. Asberry, Judge.  
Affirmed.

Eugene Poats, in pro per., for Plaintiff and Appellant.

Hinshaw & Culbertson, Gary E. Devlin and Daniel Sanchez-Behar for Defendants  
and Respondents.

Eugene Poats brought this lawsuit against financial institutions for foreclosure-related causes of action. Defendants Ocwen Loan Servicing, LLC (Ocwen) and HSBC Bank USA, National Association (HSBC) demurred to Poats's operative first amended

complaint (FAC), and the trial court sustained the demurrer without leave to amend. We affirm the judgment.

## BACKGROUND

On June 29, 2017, Poats filed his original complaint against Ocwen and Doe defendants. The complaint alleged that in May 2006, Poats purchased real property in Moreno Valley, California (the subject property). He fell behind on his mortgage payments, and in January 2017, a “Notice of Default and Election to Sell” was recorded against the subject property. According to exhibits to the complaint, Option One Mortgage Corporation (Option One) was the beneficiary under the deed of trust securing Poats’s mortgage loan. Option One sold its interest to a mortgage securitization trust called the “ACE Securities Corp. Home Equity Loan Trust, Series 2006-OP2” (the ACE investment trust). Ocwen was apparently servicing the mortgages in the ACE investment trust.<sup>1</sup>

The complaint lacked clarity, but Poats evidently wanted to stop the foreclosure sale of the subject property. The complaint alleged numerous causes of action, including negligence, fraud, cancellation of contract, wrongful foreclosure, breach of contract,

---

<sup>1</sup> “The mortgage securitization process has been concisely described as follows: ‘To raise funds for new mortgages, a mortgage lender sells pools of mortgages into trusts created to receive the stream of interest and principal payments from the mortgage borrowers. The right to receive trust income is parceled into certificates and sold to investors, called certificateholders. The trustee hires a mortgage servicer to administer the mortgages by enforcing the mortgage terms and administering the payments. The terms of the securitization trusts as well as the rights, duties, and obligations of the trustee, seller, and servicer are set forth in a Pooling and Servicing Agreement.’” (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 930, fn. 5.)

breach of the implied covenant of good faith and fair dealing, unjust enrichment, and quiet title. It also alleged causes of action “to set aside [the] trustee’s sale,” “to void, cancel or rescind the trustee’s deed upon sale,” and “to void or cancel assignment of [the] deed of trust.” (Capitalization and boldface omitted.)

Ocwen demurred to the complaint, and the court sustained the demurrer with leave to amend. The court concluded that the complaint was fatally uncertain and that each cause of action failed for additional reasons: The negligence cause of action did not adequately allege that Ocwen owed Poats a duty of care. Poats did not allege the fraud cause of action with the necessary specificity. The causes of action for cancellation of contract, breach of contract, and breach of the implied covenant of good faith and fair dealing failed to allege the existence of an enforceable contract between Poats and Ocwen. The causes of action to set aside the trustee’s sale, to cancel the trustee’s deed, and to quiet title failed to allege that a foreclosure sale had occurred. Poats lacked standing to challenge the assignment of the deed of trust and the securitization of his mortgage, and on that basis, his causes of action to cancel the assignment and for wrongful foreclosure failed. And the cause of action for unjust enrichment did not allege that Ocwen had received and wrongfully retained a benefit at Poats’s expense.

Poats then filed the FAC. In contrast to the 11-count complaint, the FAC alleged only two causes of action: cancellation of the assignment of the deed of trust and declaratory relief. The FAC also added several defendants, including HSBC as trustee of the ACE investment trust. The assignment of the deed of trust was an exhibit to the FAC. The assignment showed that in September 2016, Sand Canyon Corporation (formerly

known as Option One) transferred to HSBC (as trustee of the ACE investment trust) all of Sand Canyon Corporation's beneficial interest under the deed of trust. The FAC alleged that the assignment was void and had to be canceled for a few reasons. First, the assignment transferred Poats's mortgage to the ACE investment trust well after the closing date of the trust. This postclosing transfer allegedly violated New York state law, the Internal Revenue Code provisions governing the ACE investment trust, and the pooling and servicing agreement governing the ACE investment trust. Second, the assignment was void because it was forged or "[r]obo-sign[ed]," and the notary who acknowledged the document had committed "[n]otary [f]raud."<sup>2</sup>

Ocwen and HSBC demurred to the FAC, and the court sustained the demurrer without leave to amend. The court determined that Poats did not have standing to challenge the assignment on the basis of alleged irregularities in the securitization process or alleged robo-signing. (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 43 [assignment of a mortgage to a securitization trust after the trust's closing date renders the assignment voidable at the trust beneficiaries' behest, but not void ab initio, and the borrowers thus lacked standing to challenge the assignment as void]; *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 819-820 [borrower lacked standing to challenge the untimely assignment of her mortgage to a securitization trust on the basis of negative tax consequences and robo-signing].) The

---

<sup>2</sup> "The use of automated signatures" has been "colloquially referred to as 'robo-signing.'" (Greenwald & Bank, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2018) ¶ 6:536.16.)

court further held that the cause of action for declaratory relief was wholly derivative of the cause of action for cancellation of the assignment, so the declaratory relief cause of action necessarily failed.

The court entered judgment for defendants. Two days later, Poats filed a notice of appeal stating that he was challenging the “Summary Judgment Order by the court granting Plaintiff’s [*sic*] demurrer to dismiss [the] complaint . . . entered in this action on . . . June 29, 2017.”

## DISCUSSION

A demurrer tests whether a pleading states a cause of action as a matter of law. (*Mendoza v. JPMorgan Chase Bank, N.A.*, *supra*, 6 Cal.App.5th at p. 809.) While our review is de novo, we presume that an appealed order or judgment is correct, and the appellant bears the burden of establishing reversible error. (*Demara v. The Raymond Corp.* (2017) 13 Cal.App.5th 545, 552; *Mendoza v. JPMorgan Chase Bank, N.A.*, *supra*, at p. 809.) “We are not bound to develop appellants’ arguments for them.” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.) The appellant’s brief must summarize the significant facts without referring to matters outside the record, cite the record for factual assertions, and support each point with reasoned legal argument. (Cal. Rules of Court, rule 8.204(a)(1)(B)-(C), (a)(2)(C); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 865.) We may treat an issue as forfeited when the appellant fails to support his or her argument with the necessary citations to the record, cogent legal argument, or citation

to authority. (*In re Marriage of Falcone & Fyke*, *supra*, at p. 830; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Poats's appeal lacks merit because he fails to carry his burden on appeal. We struck his initial opening brief and informed him that "[a]ll facts stated in the brief must be found in the record on appeal," and "[a]ll facts in the brief must cite to the volume and page number in the record where they may be found." We ordered him to file an opening brief correcting those defects. Still, his new opening brief is not corrected in either respect. The 41-page brief contains no citations to the record, with the possible exception of four handwritten notations that appear either in the margins or in a space between paragraphs. To the extent that these notations are record citations, they do not satisfy Poats's obligation on appeal. He does not cite the record for numerous other factual assertions. And although we are "not required to search the record on [our] own seeking error" (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768), we have nevertheless reviewed the record, and many of the facts stated in the opening brief do not appear in the record. For instance, Poats purports to report on several other lawsuits against Ocwen and their settlements. We do not know the source of this information, but it was not in the record.

Moreover, we cannot identify any cognizable legal arguments in the opening brief. Poats's notice of appeal references the demurrer to the original complaint and the date on which he filed the complaint. Similarly, his opening brief states that he "wish[es] to be granted a review of the dismissal and to address the standing of the allegation[s] in the complaint," and then he lists the causes of action in the complaint. On appeal from the

judgment, Poats has the right to challenge the court's intermediate order sustaining the demurrer to the complaint, but only as to those causes of action that he did not reallege in the FAC. (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 44-45.) He realleged only the cause of action to cancel the assignment of the deed of trust. As to the 10 causes of action that he abandoned, he has not explained how the court ruled or why the court was wrong. Instead, his brief describes the allegations of the complaint in a near-verbatim fashion and then repeats a small section of his opposition to the demurrer (both without citation to the record). The opposition excerpt does not appear to relate to this case. It accuses an unspecified "[a]ppellee" of relying on extrinsic evidence to argue that "there was consideration," states that Poats "had expectations to be paid back for the cost and expenses upon Appellee obtaining employment," and asserts that Poats properly pleaded common counts. Elsewhere in the brief, Poats summarizes or quotes at length from the Business and Professions Code, the Revenue and Taxation Code, the Corporations Code, and articles reporting on our Supreme Court's decision in *Yvanova v. New Century Mortgage Corp.*, *supra*, 62 Cal.4th at pages 924, 939 (holding that borrowers have standing to challenge an allegedly void assignment of their deed of trust, but not one that is merely voidable). And in still other parts of the brief, Poats asserts theories of liability not found in either the complaint or the FAC, such as mail fraud, securities fraud, and the unconscionability of his mortgage loan agreement. He also calls for agency investigations of defendants. But fundamentally, Poats's brief does not address the court's order sustaining the demurrer to the complaint and explain how the court erred

with cogent legal argument and citation to authority. To the extent that he seeks to challenge the court's order sustaining the demurrer to the FAC, his brief fares no better. His brief does not even mention the FAC. Because Poats has not carried his burden of demonstrating that the court erred, we must affirm the judgment.

#### DISPOSITION

The judgment is affirmed. Respondents shall recover their costs of appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MENETREZ  
J.

We concur:

SLOUGH  
Acting P. J.

RAPHAEL  
J.